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OFFICE OF PETITIONS

In re Application of :
De, et al. :
Application No. 10/079,334 : ON PETITION
Filed: February 20, 2002 :
Attorney Docket No. I-2-188.2US :

This is a decision on the petition to withdraw the holding of abandonment under 37 CFR 1.181, filed January 28, 2008.

The petition under 37 CFR 1.181 is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181". Extensions of time under 37 CFR 1.136(a) are permitted. No fee is required for a renewed petition.

The above-identified application became abandoned for failure to timely file a reply in response to the Notice of Allowance mailed August 27, 2007. This Office action set a statutory period for reply of three (3) months. No issue fee having been received, the application became abandoned on November 28, 2007. A Notice of Abandonment was mailed on January 2, 2008.

To establish nonreceipt of an Office action, a petitioner must: 1) include a statement that the Office action was not received; 2) attest to the fact that a search of the file jacket and docket records indicates that the Office action was not received; and 3) include a copy of the docket record where the nonreceived Office action would have been entered had it been received and docketed.¹ A proper docket report consists of a "docket record where the nonreceived Office action would have been entered had it been received and docketed."² "For example, if a three month period for reply was set in the nonreceived Office action, a copy of the docket record showing **all** replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted..."³

Here, the docket record submitted on petition is only the prosecution history for the instant application. As set forth above, to establish that the August 27, 2007 Office action was not received, petitioner would need to submit his docket records showing all of his replies docketed for the due date of November 27, 2007.

While the showing of record is not sufficient to establish to the satisfaction of the Commissioner that the delay was unavoidable, petitioner is not precluded from obtaining relief by filing a petition pursuant to 37 CFR 1.137(b) on the basis of unintentional delay. A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by (1) The reply required to the outstanding Office action or notice, unless previously filed; (2) The petition fee as set forth in 37 CFR 1.17(m); and (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petitions
 Commissioner for Patents
 P.O. Box 1450
 Alexandria VA 22313-1450

¹ See MPEP 711.03(c)(II).

² MPEP 711.03(c)(II) (emphasis added).

³ Id.

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By FAX: (571) 273-8300
Attn: Office of Petitions

Telephone inquiries related to this decision should be directed to the undersigned at (571)272-3207.

A handwritten signature in cursive script, appearing to read "Cliff Congo".

Cliff Congo
Petitions Attorney
Office of Petitions